

ENFORCEMENT GUIDANCE DOCUMENT:
ADMINISTRATIVE CONSENT AGREEMENT POLICY

GENERAL

The Board of Environmental Protection encourages the staff of the Department, in cooperation with the Office of the Attorney General, to enter into consent agreements pursuant to 38 M.R.S.A. Section 347-A(1)(A) with persons who have violated statutes, regulations and permits administered by the Department.

APPLICABILITY

This policy is intended to be used by the Department for the timely and equitable resolution of civil violations of the laws, regulations and permits it administers. It is intended as general guidance for the five program bureaus to develop their own specific application consistent with the principles enunciated herein. At the discretion of the Department, Board and/or Attorney General's Office, enforcement alternatives other than a consent agreement may be pursued.

Title 38 Section 349 provides for civil penalties of not less than \$100 per day and not more than \$10,000 per day for most violations of environmental laws. However, if violations of the same law can be shown in the preceding five years or if hazardous wastes are involved the maximum daily penalty may be up to \$25,000. In addition, if economic benefit is a factor in the violation, the penalty may exceed the maximums noted above up to twice the economic benefit. The DEP may consider each statutory, regulatory or permit violation as a separate violation for the purpose of calculating a monetary penalty. Each day of continuing violation may also be calculated as a separate violation. The Department may also consider corresponding penalty policies utilized by Federal agencies when those policies are pertinent to the alleged violation in order to ensure the Department is at least as stringent in its enforcement response as the Federal agency would be were it taking the action.

PROCEDURE

Should the Department elect to pursue resolution of an enforcement matter through the consent agreement process, it shall notify, in writing, the person causing the violation and attempt to negotiate a consent agreement conforming to this policy. The notice shall set forth in clear and concise language (1) the statutes, regulations, orders or licenses violated and (2) a factual statement sufficient to inform the person with reasonable definiteness of the acts or practices which constituted the violations.

OBJECTIVES

The basic objectives of this policy are to: (1) ensure that appropriate corrective and preventative action is taken; (2) specify the statutes, regulations, licenses or permits that have been violated; (3) remove any incentives or opportunities gained by the violator(s); and (4) assess a monetary penalty for the violation(s).

CONSIDERATIONS FOR ESTABLISHING MONETARY PENALTIES

The evaluation of the seriousness of the violation and assessment of the monetary penalty will be based on the following considerations:

I. Environmental Impact/Significance of Violations

- Sensitivity of the area subject to influence by the violation.
- Relative size of area subject to influence by violation, as compared to allowable standards, including cumulative impact.
- Actual significant environmental damage caused.
- Duration of violation.
- Nature of activity or pollutants.
- Relationship of activity or discharge to allowable standards.
- Public health considerations/ risks.

II. Cause and Circumstances of Violations

- Knowledge of laws involved.
- Foreseeability.
- Circumstances causing the violation.
- Mitigation of incident or immediate impact.
- Reporting of incident.

III. Corrective Action Once Notified of Violation

- Restoration of environmental damage.
- Speed of corrective actions.
- Quality of corrective actions, including timeliness.
- Potential for recurrence.
- Level of cooperation.

IV. Prior Violations within the Past Five Years

- Number and nature of previous violations of the same law.
- Causes of prior violations.
- Quality and timeliness of prior corrective actions.

V. Financial Gain of violations - add-on to base amount or basis for utilizing 38 M.R.S.A. Section 349(8) penalty provision

Consideration of financial gains from cost savings, avoided costs, operation and maintenance savings, land values, license fees, etc. Can be utilized to exceed normal statutory maximums in appropriate situation.

Calculation of penalty: The basic penalty in dollars for each separate violation is calculated based on the criteria noted in items I - III. If there have been previous violations, the basic amount is increased in accordance with 38 M.R.S.A. Section 349(6) and the criteria noted in item IV. The amount of any financial gain, item V, is then considered in accordance with 38 M.R.S.A. Section 349(8) to obtain the final penalty.

BOARD ACTION

All consent agreements recommended by the staff will be presented to the Board for approval at a regular meeting. The Board will ordinarily accept and enter into consent agreements presented to it by the staff when the consent agreement contains terms based on this Policy.

OTHER AGENCIES

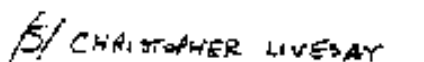
The Board recognizes that several laws and regulations under its jurisdiction may also be enforced by other state agencies using different enforcement procedures. The board encourages the staff to work closely with other agencies to ensure consistency in the enforcement of all environmental laws by making this policy available to those agencies for use as guidance and by entering into procedural agreements with those agencies.

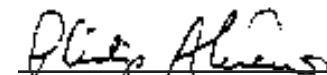
ATTORNEY GENERAL

The Attorney General's Office is involved in the review of consent agreements after they have received internal Departmental review. The Department's internal review is intended to provide quality control of written work, program prioritization and consistency in penalty assessment. Internal review will normally be accomplished within two weeks of initiation of the review process; review by the Attorney General's Office will normally take place within two weeks of receipt of a draft from the Department.

It is understood that in cases where staff efforts at negotiating a settlement by consent have been unsuccessful, the Attorney General's Office will generally support a position no less rigorous than that taken by staff in applying the terms of this policy, including penalties, to the particular case. The Board recognizes the independent authority of the Attorney General to act on his own initiative with respect to violations of any of the laws enforced by the Department of Environmental Protection. Disposition of any matter by consent requires the Attorney General to be a necessary party to the agreement.

 12/11/89
Commissioner, Department of
Environmental Protection

 1/10/90
Chairman, Board of Environmental
Protection


Attorney General